

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE

WRIT PETITION NO.4090 OF 2005

Sai Sharan Enterprises.

...Petitioner.

Vs.

The Commissioner, Malegaon
Municipal Corporation & Ors.

...Respondents.

....

Mr. Shekhar Naphade i/b. Mr. L. M. Acharya for the Petitioner.
Mr. V. A. Thorat with Mr. S.M. Sabrad for Respondent Nos.1 and
2.

Mr. P. I. Khemani, AGP for Respondent No.3.

Mr. C.J. Sawant, Senior Advocate with Mr. Vijay Patil for the
Intervener.

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**CORAM : A.P. SHAH AND
DR.D.Y.CHANDRACHUD, JJ.**

June 30, 2005.

P.C.:

Rule. Learned Counsel, Mr. V.A. Thorat appearing for
Respondent Nos.1 and 2, Learned AGP appearing for Respondent
No.3 and Learned Counsel, Mr.C. J. Sawant, appearing for the
intervener, waive service.

2. By consent, rule is made returnable forthwith.

3. The Petitioner, Sai Sharan Enterprises, has filed this petition challenging the decision/proposal of Respondent No.2-Corporation to award Octroi Collection Contract in favour of intervener, Konark Infrastructure Pvt. Ltd., at Rs.22,50,00,000/- which is lower than the upset price of Rs.26,48,10,000/-. The Petitioner is also challenging the letter dated 25th May 2005 issued by Respondent No.1-Municipal Commissioner denying the Petitioner an opportunity to participate in the tender process. The challenge is based mainly on the ground that the decision of the Corporation is contrary to the directions issued by this Court in Writ Petition No.31 of 2005.

4. The Respondent No.1 had earlier published a notice in Indian Express on 22nd October 2004 inviting offers for appointment of agent for octroi collection for a period of one year from 1st January 2005 to 31st December 2005. As per the public notice and condition No.9/VIII of the tender documents, it was specifically made clear that the offer less than the upset value of Rs.25,22,00,000/- shall not be considered and the same will be

rejected. It appears that the one Monarch Erectors Pvt. Ltd. addressed a letter dated 27th November 2004 to Respondent Nos.1 and 2 intimating that if at all the Corporation decides to accept any offer lower than the upset value, they should be informed forthwith so that they can participate in tender submission. In spite of the fact that the upset value was Rs.25,22,00,000/-, the Corporation decided to accept the offer of the present Petitioner at Rs.21,78,00,000/- which was much less than the upset value fixed by the Respondent-Corporation. The action of the Corporation was challenged by Monarch Erector Pvt.Ltd. in Writ Petition No.31 of 2005. The Division Bench presided over by the Hon'ble the Chief Justice allowing the said Writ Petition held that the Corporation has functioned in contravention of its own condition and though they mentioned that offer less than the upset value shall not be considered, they reduced it and gave the contract at a lesser amount. The decision of the Corporation was, therefore, set aside and Corporation was directed to re-advertise the contract from 1st July 2005. It was further directed that proper publicity shall be given by publishing

the tender notice in at least two National newspapers and two local newspapers and all eligible bidders must be given fair opportunity to participate in the entire tender process and the contract be awarded according to the settled principles of law.

5. Pursuant to the directions of the Division Bench, the Corporation in the month of May 2005 issued tender notice for appointing Octroi Collection Agent for a period of one year from 1st July 2005 to 30th June 2006. By this notice the upset price was fixed at Rs.26,50,00,000/- and the relevant clause was similar to one in the earlier tender notice except for the word “may” in place of “shall”. The Petitioner addressed a letter dated 21st May 2005 seeking clarification whether any bid below the upset price would be considered. By a letter dated 25th May 2005, Respondent No.1 categorically replied that the tender of the Petitioner would be considered only if they bid higher than the upset price of Rs.26,48,10,000/-. On 25th May 2005, the Petitioner wrote one more letter stating that the upset price of Rs.26,50,00,000/- was considerably high and that if the Corporation was willing to

consider any bid lower than the upset price, then they are ready to participate in the tender process and deposit the earnest money deposit as required in the Tender document. However, so far the said letter has not been replied by Respondent Nos.1 and 2. It appears that a meeting of the Standing Committee was held on 17th June 2005, wherein a resolution was passed deciding to award the contract to the intervener at a price much lower than the upset price i.e. at Rs.22,50,00,000/-. The resolution has been forwarded to the State Government for its ratification.

6. The Learned Counsel appearing on behalf of the Petitioner submitted and not without sufficient force that the action of the Corporation is nothing but total breach of the directions issued by this Court in Writ Petition No.31 of 2005. The contract in favour of the Petitioner awarded by Respondent Nos.1 and 2 earlier on 31st December 2004, was struck down and reduced to six months by this Court on the ground that acceptance of bid lower than the minimum bid or upset price was not permissible inasmuch as the same denies other bidders or participants a fair opportunity

to bid for the contract. So holding, the Division Bench directed the Corporation to re-advertise the tender. However, the Corporation instead of following the directions, repeated the said illegality and decided to award contract in favour of the added Respondent at a price lower than the upset value.

7. In the result, the proposal submitted by the Corporation for accepting the contract of the added Respondent is quashed and set aside. Considering the fact that in the past on five occasions auction was held and Corporation was not able to get the bidder at the upset price, if the Corporation decides to hold a fresh auction, the Corporation shall fix a realistic upset price so that the Corporation would be in a position to award the contract to the successful bidder with the specific condition that the bid below the upset price will not be accepted. Mr.Thorat, Learned Counsel for Respondent Nos.1 and 2, however, stated that the Corporation has taken a decision not to assign the work of collecting octroi to the outside agent and to carry out this work departmentally.

8 Learned Counsel for the Petitioner agrees and

undertakes to pay the arrears under the earlier contract to the Corporation within a period of two weeks from today and forthwith remove the Toll Station put up by them.

9. Writ Petition stands disposed of.

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